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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

DATE:  
**AUG 27 2013**

OFFICE: TEXAS SERVICE CENTER

IN RE: Petitioner:  
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

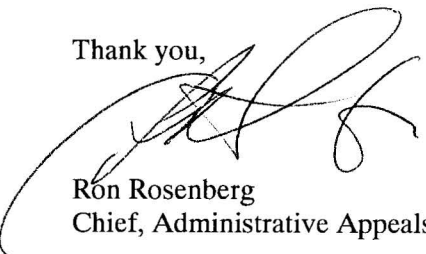
ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

  
Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the employment-based immigrant visa petition. The petitioner appealed this denial to the Administrative Appeals Office (AAO), and, on September 7, 2012, the AAO dismissed the appeal. Counsel to the petitioner filed a motion to reconsider the AAO decision in accordance with 8 C.F.R. § 103.5. The AAO granted the motion, but dismissed the appeal again on the merits on May 22, 2013. The petitioner has now filed a second motion<sup>1</sup> to reopen and reconsider the AAO's decision. The motion will be dismissed pursuant to 8 C.F.R. §§ 103.5(a)(1)(i), 103.5(a)(1)(iii)(C), 103.5(a)(3), and 103.5(a)(4).

United States Citizenship and Immigration Services (USCIS) regulations require that motions to reconsider be filed within 30 days of the underlying decision. 8 C.F.R. § 103.5(a)(1)(i). Similarly, USCIS regulations require that motions to reopen be filed within 30 days of the underlying decision, except that failure to timely file a motion to reopen may be excused in the discretion of USCIS where it is demonstrated that the delay was reasonable and was beyond the affected party's control. *Id.* In this matter, the motion was initially submitted on June 25, 2013 and rejected. The initial submission was received 34 days after the AAO's May 22, 2013 decision, and accordingly, was untimely. The petitioner resubmitted the documentation, and the Form I-290B was accepted for filing on July 9, 2013. The filing date is the actual date of receipt at the location designated for filing. 8 C.F.R. § 103.2(a)(7)(i). The appeal/motion must be signed and submitted with the correct fee. *Id.* The record indicates that the AAO's decision was mailed to both the petitioner at its business address and to its counsel of record. As the record does not establish that the failure to file the motion within 30 days of the decision was reasonable and beyond the affected party's control, the motion is untimely and must be dismissed for that reason.

Furthermore, the motion shall be dismissed for failing to meet applicable requirements. The regulation at 8 C.F.R. §§ 103.5(a)(1)(iii) lists the filing requirements for motions to reopen and motions to reconsider. Section 103.5(a)(1)(iii)(C) requires that motions be "[a]ccompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding." In this matter, the motion does not contain the statement required by 8 C.F.R. § 103.5(a)(1)(iii)(C). Additionally, in order for a motion to be considered as such, the evidence and/or brief must be submitted at the time of the filing. Nothing in the regulations allows later submission of the brief or evidence. The regulation at 8 C.F.R. § 103.5(a)(4) states that a

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<sup>1</sup> The petitioner actually checked box 2.B on the Form I-290B, Notice of Appeal or Motion, dated June 24, 2013, indicating that the petitioner was filing an appeal and would be filing a brief and/or additional evidence within 30 days. However, the AAO does not exercise appellate jurisdiction over its own decisions. The AAO exercises appellate jurisdiction over only the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003). See DHS Delegation Number 0150.1(effective March 1, 2003). An appeal of an AAO appeal is not properly within the AAO's jurisdiction. Thus, the Form I-290B, as an appeal, would be rejected on this basis, and because the appeal would still be untimely under 8 C.F.R. §§ 103.3(a)(2)(i) and 103.8(b). For purposes of this decision, the AAO will refer to the filing as a motion.

motion which does not meet applicable requirements must be dismissed. Here, the petitioner also did not submit the supporting brief and evidence until July 25, 2013, one month after the initially rejected submission of the motion. Therefore, because the instant motion did not meet the applicable filing requirements for a motion, it must also be dismissed for this reason.

Motions for the reopening or reconsideration of immigration proceedings are disfavored for the same reasons as petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *See INS v. Doherty*, 502 U.S. 314, 323 (1992)(citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110. With the current motion, the movant has not met that burden. The motion will be dismissed.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The petitioner has not sustained that burden.<sup>2</sup> Accordingly, the motion will be dismissed, the proceedings will not be reopened or reconsidered, and the previous decisions of the director and the AAO will not be disturbed.

**ORDER:** The motion is dismissed.

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<sup>2</sup> The AAO notes that the petitioner has filed a subsequent petition, utilizing the labor certification in this matter, on behalf of the same beneficiary, which has been approved by USCIS under the professional category pursuant to section 203(b)(3)(A)(ii) of the Act.